

1 Marc A. Caraska, SBN 155098
LAW OFFICE OF MARC A. CARASKA
2 2100 Northrop Ave., Suite 900
Sacramento, California 95825
3 TELEPHONE: (916) 488-4529
FACSIMILE: (916) 927-1023
4 email: mcaraska@caraskalaw.com

5 Attorney for Debtor
Consorcia Concepcion Apostol

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

In re:
MISAELO APOSTOL, CONSORCIA
CONCEPCION APOSTOL
Debtors,

CONSORCIA CONCEPCION APOSTOL
Plaintiff,
vs.
EDUCATIONAL CREDIT MANAGEMENT
CORPORATION,
Defendant.

Case No. 18-20357- B-13J
Chapter 13
Adversary No. 2023-02016
FIRST AMENDED COMPLAINT TO
DETERMINE STUDENT LOAN
DEBT DISCHARGEABLE
[11 USC 523]
Hearing date to be set by Summons

22 CONSORCIA CONCEPCION APOSTOL, Plaintiff in the above entitled case, by and
23 through his attorney, MARC A. CARASKA, hereby alleges:

1. This is an adversarial proceeding to determine the dischargeability of a debt.

PARTIES

26 2. Plaintiff, CONSORCIA CONCEPCION APOSTOL, (hereinafter "SORCY" or
27 "Plaintiff"), is a debtor in the above entitled Chapter 13 proceeding.

3. Defendant, EDUCATIONAL CREDIT MANAGEMENT CORPORATION, is a

1 creditor of Plaintiff and is the guarantor of student loans obtained by Plaintiff for her daughter
2 from 2004-2008 as a “Parent Loan”.

3 **JURISDICTION AND CORE STATUS**

4 4. This Adversary Proceeding is brought in connection with Plaintiff's Bankruptcy
5 case 18-20357-B-13J, under Chapter 13 of Title 11 United States Code, now pending in this court.

6 5. Jurisdiction of this matter is conferred on this Court pursuant to 28 U.S.C.
7 §1334(b), 11 U.S.C. §523(a).

8 6. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(H) and (I).

9 7. Plaintiff seeks to have the student loans determined to be dischargeable pursuant
10 to the bankruptcy code, including, but not limited to 11 U.S.C. § 523, subd. (a)(8).

11 8. Defendant's chapter 13 case was filed on January 23, 2018. Plaintiff's student loan
12 debt was listed in her bankruptcy schedules in the total amount of \$215,760.74.

13 9. This debt is dischargeable in this case by virtue of 11 U.S.C. § 523(a)(8), in that
14 repayment of the loans is an undue hardship to Plaintiff/Debtor.

15 **STATEMENT OF FACTUAL BASIS FOR CASE**

16 10. On or about September 2004, Plaintiff applied for and obtained a Parents Loan to
17 pay for her daughter's education at University of California Los Angeles in the principal amount
18 of \$30,000. The payment of the debt was deferred until her daughter's graduation. On or about
19 2008, Plaintiff began paying about \$200 per month on the debt until due to serious financial
20 hardship, she had to file for bankruptcy in 2011. (Case Number 11-33831 Eastern District) From
21 2011 until the present filing in 2018, Plaintiff was unable to make payments on the student loans.
22 Her income and expense schedules in the present filing indicate her and her husband's net monthly
23 income was \$282.37 which has been paid in Debtor's Plan since 2018 until the present. She has
24 had no ability to make any payments on the student loans since filing.

25 11. Plaintiff is a 76 year old woman who was recently forced to retire from her position
26 as a teacher at Sacramento City College due to a diagnosis of Stage IV lymphoma. She has been
27 treated with chemotherapy since 2018 and is not yet in remission. Further, she has recently, in
28 2022, had a heart attack and again, in 2023, has been in the hospital with “constant pleural effusion

(accumulation of fluid in her lungs), requiring constant draining. She is in ill health and unable to be gainfully employed.

3 12. Since July 2022, Plaintiff and her husband, co-debtor MISAEL APOSTOL, have
4 separated. Prior to separation the couple moved to an apartment with monthly rent of \$2,150. Her
5 husband pays half of the rent but Plaintiff's income if limited to her Social Security of \$1,261 and
6 retirement of \$793.85 for a total income of \$2,054.85. Half of her income is being used to pay
7 rent. Her other expenses are similar to those set forth in Schedule J of the present filing. As is
8 obvious, it is simply impossible for Plaintiff to find any disposable income to pay any part of the
9 student loans in question.

13. Given Plaintiff's overall health and living situation the state of affairs of Plaintiff
is likely to continue and persist for the rest of Plaintiff's life.

COUNT ONE

(11 U.S.C. § 523(a)(8))

14 14. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 13 above
15 as though fully set forth herein.

15. As set forth above, Plaintiff cannot maintain, based on current income and
16 expenses, a minimal standard of living for herself if forced to repay the loans.
17

16. The above allegations establish additional circumstances that exist which indicate
17 Plaintiff's present state of affairs is likely to persist for a significant portion of the repayment
18 period of the student loans.

17. Plaintiff has made good faith efforts to repay the loans from 2008 through her
18 bankruptcy filing in 2011. Since 2011 she has been unable to pay the loans and the amount owed
19 has increased seven fold from the original principal amount. Her present state of health makes it
20 impossible for her to make any further payments without undue hardship.

25 **WHEREFORE**, Plaintiff prays that the Court hear this matter and render judgment for
26 Plaintiff as follows:

ON THE FIRST COUNT

1. For a determination that Plaintiff's student loan debt is dischargeable and that

1 Plaintiff should no longer be responsible to pay Defendant the amount owed;
2 2. For such other and further relief as the Court may deem necessary, just and proper.

4 DATED: February 23, 2023

LAW OFFICE OF MARC A. CARASKA

By: 
Marc Caraska, Attorney for Plaintiff/Debtor